829.

SUPREME COURT OF THE UNITED STATES.

No. 83.

THE BANK OF METROPOLIS, PLAINTIFF IN ERROR,

VS.

THE NEW ENGLAND BANK.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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S. D. Langtree, Print.

UNITED STATES OF AMERICA:

The President of the United States, to the judges of the Circuit Court of the United States for the District of Columbia, sitting for the County of Washington, greeting:

[L. S.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between the President, Directors, and Company of the New England Bank, plaintiffs, and the President and Directors of the Bank of the Metropolis, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your hand, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday in January next, in the said Supreme Court to be then and there held, and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of said Supreme Court.

Issued this 10th day of May, 1841.

W. BRENT, *Clk.*
Ct. Ct. Wash. Co., D. C.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the President, Directors and Company of the New England Bank, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the second Monday in January next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the District of Columbia, in the county of Washington, wherein the President and Directors of the Bank of the Metropolis are plaintiffs in error, and you are defendant in error, to show cause if any there be, why judgment rendered against the said plaintiffs in error in the said writ of error

mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, chief judge of the Circuit Court of the District of Columbia, this 10th day of May, 1841.

W. CRANCH.

Service acknowledged, this 21 Dec'r, 1841.

JOS. H. BRADLEY,
Atty. for New England Bank.

Know all men by these presents, that we, J. P. Van Ness, Charles Hill, and Richard Smith, are held and firmly bound unto the President, Directors and Company of the New England Bank, in the full and just sum of ten thousand dollars, current money of the United States, to be paid to the said President, Directors and Company of the New England Bank, their certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 10th day of May, 1841.

Whereas, lately, at a Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said Court, wherein the said President, Directors and Company of the New England Bank were plaintiffs, and the President, Directors and Company of the Bank of the Metropolis were defendants, judgment was rendered against the said defendants; and they having obtained a writ of error, and filed a copy thereof in the Clerk's office of the said Circuit Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said President, Directors and Company of the New England Bank, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next.

Now the condition of the above obligation is such, that if the said President and Directors of the Bank of the Metropolis shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

JOHN P. VAN NESS, [L. S.]
CHARLES HILL, [L. S.]
RD. SMITH. [L. S.]

Signed, sealed, and delivered in the presence of
CHARLES W. VAN NESS,
to Van Ness & Hill,
W. E. CRONFIELD,
to Rich'd Smith.

Copy—Test: W. BRENT, *Clk.*
Approved: W. CRANCH.

Style of Court.

DISTRICT OF COLUMBIA, *sct.*

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington, at the City of Washington, on the fourth Monday of March, being the 22d day of the same month, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-fifth.

Present, the Hon. Wm. Cranch, Chief Judge; Buckner Thruston, and James S. Morsell, Asst. Judges; Alexander Hunter, Esquire, Marshal; William Brent, Clerk.

In the record of the proceedings of the said Court, among others, are the following, to wit:

Parties.

THE NEW ENGLAND BANK,
vs.
THE BANK OF THE METROPOLIS.

Be it remembered, that heretofore, to wit, on the ninth day of December, in the year of our Lord one thousand eight hundred and forty, the said plaintiffs, by Joseph H. Bradley, Esq., their attorney, and the said defendants, by Coxe & Carlisle, Esquires, their attornies, came into the Circuit Court here, and by consent docketed this suit; and thereupon, the said plaintiffs, by their attorney aforesaid, declared against the said defendants, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington County, to wit:

The President and Directors of the Bank of the Metropolis were summoned to answer unto the President, Directors and Company of the New England Bank, in a plea of trespass on the case, and so forth; and thereupon, the said plaintiffs, by Joseph H. Bradley, their attorney, complain, for that whereas the defendant, afterwards, to wit, on the first day of December, in the year eighteen hundred and forty, at the county aforesaid, were indebted unto the plaintiffs in the sum of ten thousand dollars, like money, for

the like sum of money by the plaintiffs to and for the use of the defendants before that time paid, laid out, and expended, at the special instance and request of the defendants, and for other money by the plaintiffs before that time lent and advanced to the defendants, at their special instance and request; and for other money by the defendants before that time had and received to the use of the plaintiffs; and being so indebted, the defendants, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the county aforesaid, undertook and promised the plaintiffs to pay them the last mentioned sum of money, when afterwards they should be thereunto required.

Yet the defendants the said several sums of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year last aforesaid, at the county aforesaid, and often afterwards), have not paid, but the same or any part thereof, to pay have hitherto wholly refused and still do refuse, to the damage of the plaintiffs in the sum of five thousand dollars, current money, and therefore they bring suit, and so forth.

JOS. H. BRADLEY,
Atty. for the Pl'ff.

Rule Plea.

And thereupon, on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here, that the said defendants answer the declaration aforesaid, of the said plaintiffs, in the plea aforesaid, or judgment by the court here will be entered against them in default thereof.

Non Ass't.

And the said defendants, by their attorney aforesaid, defend the force and injury, when, and so forth, and say that they did not assume upon themselves, in manner and form as the aforesaid plaintiffs above against them have complained, and of this they put themselves upon the country.

Issue Joined.

And the said plaintiffs, by their attorney, in like manner, and so forth: therefore, let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognize, &c., because, as well, &c.; and the same day is given to the aforesaid parties, then and there, &c.

Venire Facias to March Term, 1841.

And now, at this day, to wit, the said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-one,

came again into the Circuit Court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons from the pannel of petit jurors, returned to the court here by the Marshal of the District of Columbia, be called; who, being called, came, to wit:

1. Richard Brooke,
2. Samuel Drury,
3. George Mattingly,
4. George Crandle,
5. Ninian Beall,
6. George W. Hopkins,
7. Richard Jones,
8. William N. Waters,
9. Edward N. Lacy,
10. Richd. C. Washington,
11. Jabez Travers,
12. Henry Haw.

Verdict—Damages.

Who, being empanneled and sworn to say the truth in the premises, upon their oath do say, that the said defendants did assume upon themselves in manner and form as the aforesaid plaintiffs above against them have complained, and they assess the damages of the said plaintiffs sustained, by reason of the non-performance of the promise and assumption aforesaid, to the sum of four thousand two hundred and twenty-five dollars and sixty-four cents, current money, with interest from the twenty-fifth day of May, eighteen hundred and thirty-eight.

Judgment.

Therefore, it is considered by the court here, that the aforesaid plaintiffs recover against the aforesaid defendants, as well the sum of four thousand two hundred and twenty-five dollars and sixty-four cents, with interest from the twenty-fifth of May, 1838, current money, their damages aforesaid, by the jury aforesaid, in form aforesaid assessed, to be sustained by occasion of the non-performance of the promise and assumption aforesaid, as the sum of thirteen dollars and thirty-four cents, by the court here unto them, the said plaintiffs, on their assent adjudged, for their costs and charges by them about their suit in this behalf laid out and expended; and the said defendants in mercy, and so forth.

Memorandum.

Mem.—Before the jurors aforesaid retired from the bar of the court here, the said defendants, by their attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Defendants' Bill of Exceptions.

NEW ENGLAND BANK
vs.
BANK OF METROPOLIS. } *Defendants' Bill of Exceptions.*

On the trial of this cause, the plaintiff having shown, by competent testimony, that in the months of October, November and December, 1837, the Commonwealth Bank of Massachusetts had transmitted sundry drafts, notes and other commercial paper to the defendants for collection, which had been duly received, gave in evidence a letter from C. Hood to the cash'r, of defts., dated 13th Jan'y, 1838, (copied in page) and proved by David English, a competent witness, that he had been a bank officer for many years, in the District of Columbia, and was conversant with the usages of banks. That in receiving paper for collection, endorsed by the party remitting it, such individual making the remittance, in the absence of information to the contrary, is always deemed the owner; that the proceeds are, when received, credited to him, and he is charged with the costs and expenses, if any accrue, such as protests and postage. And then offered in evidence the deposition of Charles Hood, to the admissibility of which defendants objected, and the court overruled the objection, and the same was read (copied in page 14,) to which the counsel for defendants excepted; and further evidence to shew, that on the 24th Nov. 1839, the defendant was indebted to the said Commonwealth Bank in the sum of $2,200, and that balance was reduced; and the sum of $2,900 was, at the time of the receipt of the said letter of the 13th January, 1838, by the said defendant, due by said Commonwealth Bank to the defendants, and was caused by collections made by said Bank on account of the defendants, after the 24th Nov. 1839.

Whereupon, the defendants, to support the issue on their part joined, proved by competent testimony, that for several years preceding January, 1838, there had been mutual aud extensive dealings between said Commonwealth Bank and Bank of the Metropolis, and an account current between them; that in this account the one was credited with the proceeds of all paper remitted by it for collection, when received, and charged with all the costs of protest, postage, &c., connected with the same; that these accounts were regularly transmitted from one to the other, and always settled upon these principles. That the notes and paper in question had been transmitted by the Commonwealth Bank to the Bank of Metropolis, by letters, of which the following are specimens, many such being remitted, (copied in page ;) that the notes, drafts, &c., thus remitted, were endorsed, first by the payers respectively, then specially as follows: pay C. Hood, Esq., cash'r; pay George Thomas, Esq., cash'r, E. P. Clarke, cash'r, & Charles Hood, cash'r, as the last endorser, which said Clarke was the cashier of plaintiffs, and Hood

the cashier of the Commonwealth Bank, without any thing on, or transmitted with said paper, to indicate that either or any party acted as agent for any other person; that prior to the 13th January, 1838, the Commonwealth Bank had become insolvent, and when the letters of the 13th January, 1838, were received at the Bank of the Metropolis, the Commonwealth Bank was indebted on the general account current, $2,900; that said letters conveyed the first and only information ever received by defendants, of the plaintiffs having any interest or property in said notes and paper. That the form of indorsement of a note or draft, which is the property of the Bank transmitting it for collection, is precisely the same as in this case. That it is the common practice and usage in all such cases for the Bank receiving such paper, to hold it as the property of its correspondent and immediate endorser; to transmit to such correspondent the protests and notices of dishonor; to charge such correspondent with the cost of protest and postage, &c.; to credit it with the proceeds when received, and in all respects to treat such correspondent as the party immediately responsible, and entitled to such proceeds. And defendants further gave in evidence the letter from George Thomas to E. P. Clarke, dated 10th Feb'y, 1838, (copied in page 21.)

Whereupon, the counsel for defendants prayed the court to instruct the jury, that, if they shall believe from the said evidence that the Commonwealth Bank did for a series of years transact business with defendants, and did from time to time transmit notes and other commercial paper to defendants for collection, which were all treated by both parties as if the same were the property of the said Bank of the Commonwealth, who were credited in their account current with the proceeds, and charged with the costs and expenses, which accounts were from time to time adjusted upon these principles; that the notes and paper mentioned in said letter of 13th January, 1838, were endorsed and transmitted in the ordinary course of business, without any notification that any other party or person had any interest in said paper, were thus received by defendants, and held by them; that while thus held by them, the said Commonwealth Bank became insolvent or embarrassed in its circumstances, and after such embarrassment the letters aforesaid of the 13th January, 1838, were written, and at the time of their receipt by defendants, said embarrassed state of said *Commercial* Bank was known to defendants, and there was at that period a large balance on general account due defendants from said Commonwealth Bank, and the said paper was all regularly endorsed by the cashier of said Commonwealth Bank to defendants; the said defendants had a right to receive said paper, and the proceeds when recovered, until such balance was paid; and plaintiffs are not entitled to recover; which instruction, as prayed, the court refused to give; whereupon the counsel for defendants excepts to such refusal, and prays the court

to seal this bill of exceptions, which is accordingly done this 1st May, 1841.

W. CRANCH, [L. S.]
B. THRUSTON, [L. S.]
JAMES S. MORSELL, [L. S.]

Deposition of Charles Hood, referred to in the foregoing bill of exceptions, (page 10,) to wit:

I, Charles Hood, of the city of Boston, in the county of Suffolk and Commonwealth of Massachusetts, gentleman, of the age of fifty years and upwards, do depose and testify, that I am now, and ever since the establishment of the Commonwealth Bank, a corporation created by an act of the Legislature of the said Commonwealth of Massachusetts, have been the cashier of the same Bank, transacting business in the city of Boston; that at various times in the year one thousand eight hundred and thirty-seven, I received, in my said capacity from the New England Bank, a corporation created by the said Legislature, and also transacting business in the city of Boston, the several notes and obligations payable in Washington, in the District of Columbia, described in the schedule annexed and marked A, to be collected by said Commonwealth Bank for said New England Bank, which notes and obligations were by me forwarded, for the purpose of collection, to the Bank of the Metropolis, at Washington; that on the 13th day of January, 1838, at the request of said New England Bank, I delivered to said Bank a letter or order, addressed to said Bank of the Metropolis, for the transfer of said notes and obligations to the said New England Bank, and the payment of the proceeds of any of them which might have been collected; and I further depose and testify, that the said Commonwealth Bank, never, at any time, owned any of said notes or obligations, or any part or either of them, and had never any right, title, interest, claim or lien thereon, but that the same were at the time of the receipt, and ever afterwards, the property of said New England Bank, and subject to its order and control. I further testify, that I did not retain a copy of the said schedule marked A, but believe *that* the one hereunto annexed to be true and correct.

CHARLES HOOD.

A.—Referred to in the above deposition.

COMMONWEALTH BANK, *Boston, Jan'y* 13, 1838.

Sir,—You will please hold the following described paper forwarded by me, subject to the order of the cashier of the New England Bank, it being the property of that institution, viz:

W. Noyes & Co's note, due Feb. 19–22,	- -	$167 00
W. Morton on W. Noyes & Co. " 21–24,	- -	101 40

M.C. Pratt, on W. Noyes & Co.	Mar.	1–4,	- -	$281 78
N. Morton, " do.	"	2–5,	- -	199 80
" " do.	"	15–18,	- -	177 60
W. Noyes & Co. note,	"	16–19,	- -	473 00
" "	"		- -	370 50
N. Morton on W. Noyes & Co.	"	22–25,	- -	177 60
T. & E. Batcheller's note	"	25–28,	- -	262 80
A. W. Turner's note due	April	1–4,	- -	434 11
A. Morton on W. Noyes & Co.	"	2–5,	- -	177 60
Geo. Clarke's "	"	13–16,	- -	244 00
N. Morton, "	"	27–30,	- -	192 60
W. Noyes & Co's. note	May	4–7,	- -	360 89
Henshaw W. & Co. on J. L. Peabody,	"	22–25,	- -	605 06
M. C. Pratt on proceeds of same, if paid,	June	5–8,	- -	241 01

Yours, respectfully,
Signed, CHARLES HOOD, *Cash'r.*

GEORGE THOMAS, Esq.
Cash. Bank of Metropolis, Washington, D. C.

I certify that the above paper writing marked (A) was produced by Charles Hood, on the taking of the deposition aforesaid, and is the writing or schedule referred to and verified by him at the time, and that the same is annexed to the said deposition by me.

PETER O. THACHER,
Judge of the Municipal Court of the city of Boston.

(N. B. Certificate of P. O. Thacher, to be here inserted before the Governor's certificate, copied in page 18.)

Judge's Certificate.

P. O. Thacher's Certificate.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, City of Boston, ss.*

On this third day of April, in the year one thousand eight hundred and forty-one, the aforegoing deponent, Charles Hood, who is personally known to the subscriber, having been first carefully examined and cautioned, and sworn to testify the whole truth agreeable to law, subscribed the deposition aforesaid, after the same had been reduced to writing by the subscriber, who is sole Judge of the Municipal Court of the city of Boston, which is a Court of Record for the said county of Suffolk and Commonwealth. The subscriber is not at this time, nor never has been heretofore, of counsel or attorney to either of the parties, and is not interested in the event of the cause. The said deposition is taken at the re-

quest of the President, Directors and Company of the New England Bank, and it is to be used in an action now pending between them and the Bank of the Metropolis, before the Circuit Court of the District of Columbia, for the county of Washington, Washington City: the deponent being at a greater distance from the place of trial than one hundred miles, is the cause of taking this deposition, and the said Bank of the Metropolis, not living or being within one hundred miles, nor having any attorney within that distance, was not notified or present, nor did any person attend on their behalf.

PETER O. THACHER,

Sole Judge of the Municipal Court of the city of Boston, being a Court of Record for said County and Commonwealth.

COMMONWEALTH OF MASSACHUSETTS.

By his Excellency John Davis, Governor and Commander-in-Chief in and over said Commonwealth,—To all whom it may concern.

Know ye, that Peter O. Thacher, Esq., is Judge of the Municipal Court of the city of Boston, for the county of Suffolk, in said Commonwealth, duly constituted and commissioned, and that to his acts and attestations as such, full faith and credit are and ought to be given in and out of Court; that the within attestation is in due form, and by the proper officer; and that the signature of the said Thacher is his genuine signature.

In testimony whereof, I have caused the public seal of the Commonwealth to be hereunto affixed, this 3d day of April,
[L. S.] A. D., 1841, and in the sixty-fifth year of the independence of the United States of America.

By his Excellency the Governor, JOHN DAVIS.

JOHN P. BIGELOW, *Secretary of State.*

Letter from E. P. Clark, to George Thomas, of 13 Jan., 1838.

Letter from E. P. Clark, Cash., to George Thomas, dated 13th of January, 1838, referred to in the foregoing bill of exceptions, page 8.

New England Bank, Jan. 15, 1838.

GEO. THOMAS, ESQ., *Cashier.*

Sir,—Annexed is the order of C. Hood, Cashier (copied in page 10) for paper forwarded you for collection on our account; you will please acknowledge the receipt of this letter, and hold the paper referred to, or proceeds thereof, subject to an order, in conformity.

And oblige yours, with respect,

E. P. CLARK, *Cashier.*

Letter from Thomas to Clark, 7 February, '38.

Letter from Geo. Thomas to E. P. Clark, Cashier, dated 7th February, 1838, referred to in exceptions, page 9.

Bank of the Metropolis, 7th February, 1838.

E. P. CLARK, ESQ., Cashier.

Dear Sir,—I have received your letters, of the 13th and 30th ult., which would have been earlier answered, did they not involve a question for the consideration and advice of our board.

That action is now had, and I am instructed to inform you that the notes forwarded us for collection by the Commonwealth Bank, on their account, are held to secure the payment of $3,541 17-100, due from that Bank to this; that amount was due to us before the date of the order to transfer the notes to you. On the payment of our balance, the residue will go to your credit as the notes are paid.

With great respect, your most ob't ser'vt,

GEO. THOMAS, *Cashier.*

Letter from Clark to Thomas, 10th February, '38.

Letter from E. P. Clark to Geo. Thomas, Cashier, referred to in exceptions, page 9.

New England Bank, February 10, 1838.

GEO. THOMAS, ESQ., *Cashier.*

Dear Sir,—I have your favor of the 7th inst., and have to express the surprise of the directors of this Bank, that you should suppose yourself authorised to convert the property of this institution, which happens to be in your hands, to the protection of a demand held by you against others. We decidedly protest against *against* such construction, and cannot consent that our property should be thus applied. I have, therefore, to renew my request, that the paper described in the order of the Commonwealth Bank, forwarded with my letter of the 13th January, or the proceeds thereof, be held as our property, and subject to our order.

This Bank, altho' a large creditor to the Commonwealth Bank, and holding paper from them, has unhesitatingly transferred it to the proprietors, under circumstances precisely similar to those existing in the case of our paper now in your hands; and we felt that we were bound to do so, by those principles of justice, and those doctrines of law, which are universally recognized.

We have no doubt, that on further consideration, your views on this subject will be modified, and that you will not attempt to hold paper which is specifically ours, and which the Commonwealth Bank had no right to pledge in any manner whatever.

Very respectfully, your ob'dt ser'vt,

E. P. CLARK, *Cashier.*